

ENTERED

August 25, 2016

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**TYSON DOOLEY, individually and on
behalf of all others similarly situated,

Plaintiff,

VS.

NINE ENERGY SERVICE, LLC,

Defendant.

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CIVIL ACTION NO. H-15-02433

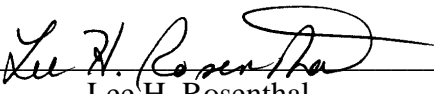
ORDER

The plaintiffs in this conditionally certified collective-action Fair Labor Standards Act case filed a motion for partial summary judgment as to certain affirmative defenses. (Docket Entry No. 51). The defendants agreed not to oppose the court granting the motion for partial summary judgment as to these defenses. They include the professional-exemption defense as to Tyson Dooley, who has been deposed, and the defenses of ratification, estoppel, accord and satisfaction, waiver, and offset as to both Tyson Dooley and the other plaintiffs, who have not. The defendants clarified that they did not assert a failure-to-mitigate defense, making the motion for partial summary judgment moot as to that defense. The defendants also clarified that the offset defense applies only if there is evidence that a plaintiff has received compensation for “periods not compensable under the Fair Labor Standards Act.” (Docket Entry No. 44, p. 14). As to the other affirmative defenses, including the professional-employee exemption and the estoppel defense for plaintiffs other than Tyson Dooley, the defendants assert that withdrawal is premature. Instead, the defendants ask the court to defer ruling on this part of the motion until they have deposed representatives of the six discovery groups. The deadline for discovery, including those depositions, is August 29, 2016.

The court grants the plaintiffs' motion for partial summary judgment as to the professional-employee exemption defense and the affirmative defenses of ratification, estoppel, accord and satisfaction, waiver, and offset, with respect to Tyson Dooley. (Docket Entry No. 55). The court also grants the motion for partial summary judgment as to the affirmative defenses of ratification, estoppel, accord and satisfaction, and waiver as to all plaintiffs. The court does not rule on the motion for partial summary judgment as to the professional-employee exemption and estoppel defenses with respect to the six discovery group plaintiffs not yet deposed and the remaining opt-in plaintiffs. As to these defenses, the court grants the defendants' motion to defer under Rule 56(d). (Docket Entry No. 54).

The defendants must notify counsel for plaintiffs no later than September 6, 2016, whether they withdraw the affirmative defenses as to all or any of the plaintiffs. The plaintiffs have until September 16, 2016, to supplement their motion for partial summary judgment as to these affirmative defenses. The defendants have until September 26, 2016 to file their supplementation and response.

SIGNED on August 25, 2016, at Houston, Texas.



Lee H. Rosenthal
United States District Judge